

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6557

IN THE MATTER OF:

Served March 4, 2002

Application of WESTVIEW MEDICAL &)
REHABILITATION SERVICES, P.C. INC.,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2001-50

This matter is before the Commission on applicant's motion for waiver of Commission Regulation No. 66. Regulation No. 66 provides that: "The time for compliance with the requirements for a conditional grant of authority will not be extended beyond a maximum of 180 days from the date the conditional grant of authority is issued. Such conditional grant of authority shall be considered void effective on the 181st day." For the reasons explained below the motion is denied.

The Commission issued a grant of authority in this proceeding on August 1, 2001, in Order No. 6308. The grant was subject to the usual requirement that applicant file within thirty days evidence of insurance, a tariff, a vehicle list, vehicle registration cards, proof of vehicle safety inspection, and an affidavit of vehicle identification. The order warned that applicant's failure to timely satisfy the conditions of issuance would void the grant of authority and cause the application to stand denied.

Applicant responded with an incomplete filing on August 22, 2001. The affidavit of vehicle identification was missing, and the evidence of insurance, tariff, and proof of vehicle safety inspection were unacceptable. A letter detailing the deficiencies was sent to applicant on August 31, 2001. On December 17, 2001, with the 180-day deadline looming and having received no response or request for extension of the initial thirty-day deadline, staff sent a letter to applicant warning of the maximum time limit under Regulation No. 66.

Applicant responded with a second incomplete filing on January 18, 2002. The evidence of insurance and tariff were still not acceptable, and there was no explanation of why the filing was so late, merely a statement that the delay was "unavoidable."

A letter detailing the remaining deficiencies was sent to applicant on January 22, 2002. On January 28, 2002 -- 180 days after the conditional grant was issued -- applicant filed its motion to waive Regulation No. 66.

Regulation No. 66 may be waived for good cause shown after taking into consideration the purposes of the regulation.¹ "The purposes underlying Regulation No. 66 are two-fold. First, it

¹ In re Old Town Trolley Tours of Wash., Inc., & D.C. Ducks, Inc.,
No. AP-96-44, Order No. 5053 (Apr. 2, 1997).

prevents the issuance of operating authority at a time when the fitness finding has become stale. Second, it ensures closure."²

Applicant's motion seeks an additional sixty days to file acceptable evidence of insurance and a contract for the purpose of filing a tariff, but the motion offers no assurance that sixty days will be sufficient. In fact, the motion explains that these documents are in the hands of third parties and outside of applicant's control.

In any event, good cause does not include rewarding an applicant for its own lack of diligence. In this case, applicant has been less than diligent in several respects but in particular with respect to filing acceptable evidence of insurance.

Under Regulation No. 58, applicant is required to maintain \$1.5 million of motor vehicle liability insurance. This requirement is prominently displayed in the application form. Applicant's first filing included a certificate of insurance for only \$500,000 in motor vehicle liability insurance. Applicant's second filing included two certificates of insurance for a total of \$2 million in motor vehicle liability insurance, but the certificates were flawed.

The \$2 million insurance filing consisted of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Endorsement) for \$1 million in primary coverage and a WMATC Endorsement for \$1 million in excess coverage. Neither Endorsement was issued by the underlying insurance company or an authorized agent. When the insurance companies were made aware of the scope of the WMATC Endorsement, the primary insurer accepted its terms but the excess insurer did not.

Had applicant made a complete filing by August 31, 2001, as required under Order No. 6308, instead of waiting nearly six months to produce an excess WMATC Endorsement, the issues surrounding applicant's insurance could have been resolved well before the January 28, 2002, deadline.

On the issue of applicant's failure to file an effective contract tariff, we note that applicant's contract with the District of Columbia Department of Health expired June 30, 2001, and applicant has been unable to secure a renewal. We are sympathetic to applicant's plight, but the Compact mandates the filing of an effective tariff. We are powerless to waive that requirement.

In the meantime, we have some concerns about applicant's evidence that notwithstanding the absence of a contract renewal, the DC Department of Health apparently is continuing to accept services from applicant and pay for those services at a rate unilaterally set by the department. Applicant is admonished that such services may not include transportation of passengers between points in the Metropolitan District, unless and until such time as applicant is issued WMATC operating authority.

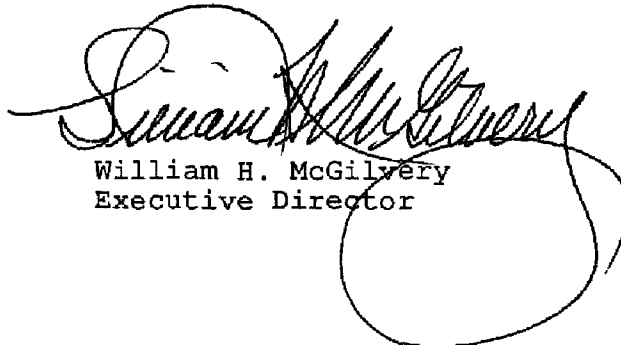
² Id.

In closing, we caution applicant that this is the second time applicant has failed to satisfy the conditions of a grant of authority within 180 days. The first occurred in connection with an application approved December 8, 1999.³ Under Regulation No. 66, should applicant apply again and receive a conditional grant, a third such failure would bar any further application for a period of one year.

THEREFORE, IT IS ORDERED:

1. That applicant's motion for waiver of Regulation No. 66 is denied.
2. That pursuant to Order No. 6308 and Regulation No. 66, the grant of authority in Order No. 6308 is void, and the application stands denied.
3. That within 30 days from the date of this order applicant shall remove from applicant's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61 and file a notarized affidavit with the Commission verifying removal.
4. That applicant may not transport passengers for hire between points in the Metropolitan District unless and until otherwise ordered by the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, LIGON, AND MILLER:



William H. McGilver
Executive Director

³ In re Westview Medical & Rehab. Servs., P.C. Inc., t/a Westview, Inc., No. AP-99-61; Order No. 5762 (Dec. 8, 1999).